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Action by the Commonwealth of Virginia against J. Frederick Kernochan, committee of Marie Marshall, an insane person, for collection of taxes on intangible property. Judgment for defendant, and the Commonwealth appeals. Affirmed.

Ino. R. Saunders, Atty. Gen., S. O. Bland, of Newport News, and Frank Armistead, of Williamsburg, for the Commonwealth.

Miller & Miller and Meredith & Meredith, all of Richmond, for defendant in error.

MANN v. CITY OF LYNCHBURG.

March 17, 1921.

[106 S. E. 371.]

1. Master and Servant (§ 364*)—City and Not State Employer of Policeman.—If a policeman is an employee, within the Workmen's Compensation Act, the city, as the party using his services for pay, and not the state, is liable for benefits.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 727.]

2. Master and Servant (§ 417 (5)*)—Compensation Case Fully Determined in Public Interest, though Submitted on Limited Certification.—The question whether a policeman is an employee within the protection of the Workmen's Compensation Act will be determined as one of a public nature, though the case is submitted to the Supreme Court of Appeals on a limited certification, presenting merely the employer.

3. Municipal Corporations (§ 186 (1)*)—Policeman Is a "Public Officer."—A policeman is a "public officer," and the compensation he receives is an incident to the office.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Officer. For other cases, see 10 Va.-W. Va. Enc. Dig. 199.]

4. Master and Servant (§ 364*)—Policeman Not within Compensation Act Defining "Employers" and "Employees."—Under Workmen's Compensation Act, § 2, declaring in subdivision (a) that "employers" shall include the state or any municipal corporation, and in subdivision (b) that the term "employees" shall include every person in the service of another under any contract of hire, the relation of employer and employee does not exist between a municipality and a policeman, so as to create a liability for benefits, for a policeman is a public officer.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Employee; Employer.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Questions Certified from the Industrial Commission.

Claim by Willie H. Mann against the City of Lynchburg or the Commonwealth of Virginia for compensation under the Workmen's Compensation Act for the death of Lee Arthur Mann. On questions certified by the Industrial Commission. Questions answered, and claimant denied compensation.

N. C. Manson, of Lynchburg, *John R. Saunders, Atty. Gen.*, and *J. D. Hank, Jr., Asst. Atty. Gen.*, for city of Lynchburg and the Commonwealth.

REALTY CO. OF VIRGINIA, Inc., *v.* BURCUM.

March 17, 1921.

[106 S. E. 375.]

1. Trial (§ 252 (2)*)—Instructions Must Be Supported by Testimony.—A trial court is not required to give instructions presenting a plaintiff's or a defendant's theory of a case, unless these instructions are supported by the testimony, and it must be supported by appreciable evidence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 718.]

2. Contracts (§ 176 (1)*)—Duty of Court to Construe Deed or Contract.—It is the duty of the court to construe a deed or contract, and the rule against peremptory instructions is not to be construed as applying to cases in which the verdict of the jury depends necessarily and exclusively upon a question of law, such, for example, as the legal effect of a deed or contract.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 706.]

3. Brokers (§ 56*)—Representation of Purchaser that He Was Not under Obligations to Broker Did Not Relieve Owner of Liability for Commission.—A negative answer by purchaser to inquiry of owner of property whether purchaser was under any obligations to a real estate agent who had the land listed would not relieve the owner from liability, if as a matter of fact the real estate agent was the procuring cause of the sale.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 639.]

4. Brokers (§ 53*)—Activities of Realty Company's Agent Held Not Procuring Cause of Sale.—Under a contract providing, "Should said property be sold to any one with whom the realty company has negotiated for the sale thereof or to whose attention it has directly brought the property, I agree to pay said realty company the said commission above mentioned," landowner reserving right to sell without compensation to the realty company, the realty company was not entitled to commissions, where its agent, while driving past the land

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.